

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 13, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF: 06MD-166

MAUI

Cancellation of Revocable Permit Nos. S-7092 and S-5279,  
Charles S. Ota, Permittee, Waiohuli-Keokea, Kula, Makawao,  
Maui, Tax Map Key (2) 2-2-004: 001, 002, 029, 066 and 075

PURPOSE:

Cancellation of Revocable Permit (RP) Nos. S-7092 and S-5279,  
Charles S. Ota, Permittee.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiohuli-Keokea, Kula,  
Makawao, Maui, identified by Tax Map Key (2) 2-2-004:001, 002, 029,  
066 and 075, as shown on the attached map labeled Exhibit A.

AREA:

RP No. S-7092 = 205.01 acres, more or less  
RP No. S-5279 = 10 acres, more or less

TOTAL = 215.01 acres, more or less

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE OF PERMIT:

RP S-7092 Commenced on December 22, 1995  
RP S-5279 Commenced on August 1, 1976

MONTHLY RENTAL:

RP S-7092 \$190  
RP S-5279 \$13

BACKGROUND:

On June 25, 1993, the Board of Land and Natural Resources authorized the issuance of a revocable permit for the subject parcels (totaling 205.01 acres) and the subsequent public auction of the subject lands. This Board action was further amended on June 24, 1997 to address proposed changes to the lease term and reopening periods.

On May 2, 2005 the Maui District Land Office received a request, from the Permittee, to cancel the subject revocable permits due to his adverse health conditions and retirement (Exhibit B).

Accordingly, staff responded on May 12, 2005 via letter stating that termination of the RP's was to commence on May 31, 2005 subject to a final site inspection to be conducted on May 25, 2005 to ensure the State properties was returned in a clean, sanitary, and orderly condition.

On May 25, 2005, staff conducted a site inspection which revealed a high level of metallic solid waste being stored on the subject properties (Exhibit C).

Pursuant to the site inspection, Mr. Ken Ota, acting representative of Mr. Charles S. Ota, due to his adverse health conditions, was made aware of our solid waste concerns and was instructed to conduct a complete abatement and disposal of all solid waste at a licensed solid waste collection facility. At the time, because of the inability of the County of Maui and private solid waste collection operators to accept large amounts of metals, more than adequate time was to be granted to Mr. Ota to conduct clean up efforts.

On January 20, 2006, staff conducted another site inspection to ascertain the progress in the clean up efforts at the subject location. As of this inspection date, solid waste issues had not been rectified. Furthermore, it had come to the attention of the Maui District Land Office that Mr. Ota had sold all of his interest in the improvements at the subject location as well as the animals being pastured at the subject location thus constituting an unauthorized sublease of the subject premises.

Because, more than one (1) year was afforded to Mr. Ota to ensure that the properties were returned in a clean, sanitary and orderly condition, on August 22, 2006, via certified mail with return receipt, the Permittee was given Notice to Vacate the subject properties by Friday, September 29, 2006.

On August 29, 2006, the Maui District Land Office received a request to extend the subject permit until the proposed auction date in 2007.

ANALYSIS:

At this time Staff recommends that the Land Board not accept the Permittee's request to extend the subject month-to-month revocable permits for the following reasons:

- 1) In addition to clean up efforts, Mr. Ota is also responsible for conducting a Level One (1) Hazardous Waste Evaluation pursuant to provision No. 14 contained in RP No. S-7092. At this time, the evaluation has not been conducted. A complete and thorough evaluation may not be possible within an area with active ranching operations.
- 2) Current use of the area by someone other than the existing Permittee constitutes an unauthorized sublease of State lands and is a violation of State law.
- 3) During past site inspections, it was discovered that a Chinese graveyard exists within the pasture area (Exhibit D). According to Melissa Kirkendall, Archeologist with the State DLNR Historic Preservation Division, it is recommended that the burial site be identified and protected with a buffer zone and perimeter fence. This will require an archeological evaluation, survey of the area and procurement of construction activities.
- 4) On June 23, 2006 the State transferred a portion of the subject lands under RP No. S-5279 to the Hawaii Health Systems Corporation via Land Patent Grant No. S-16,003. As a result, the area to be auctioned off needs to be clearly identified by a land survey, staking and fencing.
- 5) Abatement of any residual waste will need to be accomplished without interference.

There is no assurance by the Permittee that the Permittee will faithfully clean up the State properties in a timely manner. If the State takes on this responsibility, the costs incurred should be borne by the Permittee. Staff is recommending RP Nos. S-7092 and S-5279 be terminated.

RECOMMENDATION:

That the Board authorizes the cancellation of Revocable Permit Nos. S-7092 and S-5279 in the manner specified by law, subject to any applicable conditions cited above, which are by this reference incorporated herein and subject further to the following:

1. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-7092 and S-5279 to be applied to any past due amounts;

October 13, 2006

2. Terminate the permit and all rights of Permittee and all obligations of the Permitter effective as of October 13, 2006, provided that any and all obligations of the Permittee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Permitter reserves all other rights and claims allowed by law; and
3. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Revocable Permit Nos. S-7092 and S-5279 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,

*Dan Ornellas*

*for* Daniel Ornellas  
District Land Agent

APPROVED FOR SUBMITTAL:

*Peter T. Young*  
Peter T. Young, Chairperson



Charles Ota  
May 2, 2005

To: Daniel Ornellas  
D.L.N.R. Maui agent.

Dear Sir

I would like to ask you to cancel my lease with the State and reissue it to Brendan Balthazar owner of Diamond B Ranch. I am getting out of the cattle business and I feel that he is a very qualified and respected rancher here on Maui. He also has a very good record, improving and caring for other ranch land, that he has, on a long term lease with the State. The parcels that I would like reissued are: RP 5279 TMK (2) 2-2-004:057 and RP 7092 TMK (2) 2-2-004:001,002,029, and 066. I would like to thank you for any help you can give us in the resolve of this matter.

75

Charles Ota



Notary:

INDIVIDUAL

STATE OF HAWAII,  
~~Kauai~~ County of ~~Honolulu~~ } ss:  
Maui

On this 3rd day of May, A. D. 2005, before me personally appeared

\* \* Charles Ota \* \* \*

to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

 Notary Public, State of Hawaii

My Commission Expires June 4, 2008

My Commission Expires June 4, 2008

EXHIBIT " B "





08.21.2005

EXHIBIT C





08.21.2005

EXHIBIT C





08.21.2005

EXHIBIT C





08.21.2005

EXHIBIT C



05.20.2005



EXHIBIT D

05.20.2005

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